

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2019-64-WS - ORDER NO. 2020-94
JANUARY 30, 2020

IN RE: Application of CUC, Incorporated for)	ORDER RULING ON
Adjustment of Rates and Charges)	APPLICATION FOR
)	ADJUSTMENTS IN
)	RATES

I. Introduction

This matter is before the Public Service Commission of South Carolina (the “Commission”) on the Application¹ of CUC, Inc. (“CUC” or “the Company”) filed on July 23, 2019, requesting approval of an increase in rates and charges, as well as modification of certain terms and conditions, for water and sewer services that CUC provides to its customers in its Commission-approved service area of Callawassie Island and Spring Island in Beaufort County, South Carolina. The Application was filed pursuant to S.C. Code Ann. § 58-5-240 and 10 S.C. Code Ann. Regs. 103-712.4.A and 103-512.4.A.

In the Application, CUC requested to increase revenues for combined operations by \$238,004, consisting of a water revenue increase of \$161,163 and a sewer revenue increase of \$76,841. The CUC requested revenue increase results in a potential Operating Margin (OM) of 15.18%. According to the Application, CUC requires an increase in rates because it has experienced an increase in operating expenses and a

¹ Hearing Exhibit No. 7 consists of CUC’s Application.

decrease in revenues. Should the Commission not approve the Company's requested proposal, CUC further seeks Commission approval of revenues that would allow it the opportunity to earn a reasonable Operating Margin.

The Commission takes notice that CUC's last rate case before this Commission was in Docket No. 2013-451-WS. In that case, the Commission, pursuant to Commission Order No. 2014-1001, approved a Settlement Agreement between ORS, CUC, and the Callawassie Island Property Owners Association and the Spring Island Property Owners Association. According to the Settlement Agreement, CUC received a revenue increase of \$299,760 and an OM of 12.51%.

On August 1, 2019, the Chief Clerk of the Commission instructed CUC to publish a prepared Notice of Filing, one time, in newspapers of general circulation in the area affected by CUC's Application. The Notice of Filing described the nature of the Application and advised all interested persons desiring to participate in the scheduled proceedings of the manner and time in which to petition to intervene in the proceedings as a party of record. In her letter of August 1, 2019 to all parties, the Chief Clerk also instructed CUC to notify the County Administrator in any county that CUC provides services and to notify each affected customer by mailing or, where the customer had previously agreed to electronic notice, by e-mailing each customer a copy of the Notice of Filing. CUC filed Affidavits of Publication and Mailing demonstrating that the Notice

of Filing had been duly published and provided to all customers in compliance with the Chief Clerk's instructions.²

The South Carolina Office of Regulatory Staff ("ORS") is a party to this docket by virtue of S.C. Code Ann. § 58-4-10(B). The Callawassie Island Property Owners Association, Inc. and the Spring Island Property Owners Association ("Intervenors" or "POAs") jointly filed petitions to intervene on August 15, 2019. The POAs were granted intervenor status on August 28, 2019, pursuant to Commission Order No. 2019-609. The South Carolina Consumer Advocate was notified of this proceeding pursuant to S.C. Code Ann. § 37-6-604(C) but did not intervene.

During the proceedings, CUC was represented by Charles L.A. Terreni, Esquire, the ORS was represented by Andrew M. Bateman, Esquire, and C. Lessie Hammonds, Esquire, and the POAs were represented by John J. Pringle, Jr., Esquire.

On September 12, 2019, the POAs requested the Commission to schedule a public night hearing at a convenient time and location for customers of CUC to present their comments regarding the service and rates of CUC. In response, the Commission issued Order No. 2019-679 directing Commission Staff to schedule an evening public hearing in Beaufort County. The Commission's Docketing Department instructed CUC to provide a prepared Notice of Public Night Hearing to each customer. CUC filed Affidavits of Publication and Mailing demonstrating that the Notice of Filing had been duly published

² See Proof of Publication in *The Island Packet*, filed August 13, 2019, and Letter to Ashley Jacobs, Beaufort County Administrator with Attached Notice of Filing and Hearing and Prefiled Testimony Deadlines.

and provided to all customers.³ On December 9, 2019, the Commission held a night hearing beginning at 6:00 pm at the Callawassie Island Club, 22 Callawassie Club Drive, Okatie, South Carolina.⁴ At the night hearing 26 witnesses testified before the Commission. The witnesses testified regarding a number of issues including: the high rates and purported disproportionate amount of the increase that flows to CUC's officers; availability fees; lack of a CUC website and the inability to pay bills online; CUC service performance; a perceived poor response to maintain current infrastructure; CUC's Florence office; CUC's paid health care premiums; late charges; and bill format.

On December 16, 2019, the Commission, with Chairman Comer H. "Randy" Randall presiding, heard the matter of CUC's Application beginning at 10:00 am at the Commission Hearing Room located at 101 Executive Center Drive in Columbia, South Carolina.

At the December 16th hearing, CUC presented direct and rebuttal testimony of Susan B. Mikell,⁵ President of the Company, the direct testimony of Billy F. Burnett,⁶ Vice-President of CUC, and the rebuttal testimony of Gary Walsh.⁷ Ms. Mikell also

³ See Affidavit of Mailing to Customers and Notarized Affidavit of Mailing filed on the Commission's Docket Management System on December 9, 2019 and December 10, 2019, respectively.

⁴ Hearing Exhibit 1 consists of the night hearing sign-in sheets. Hearing Exhibit 2 consists of a previous bill of CUC customer Fern Karas. Hearing Exhibit 3 consists of previous bills of CUC customer Thomas Gasparini. Hearing Exhibit 4 consists of previous bills of CUC customer Carol Boes. Hearing Exhibit 5 consists of letters regarding late bills of CUC customer Chris Morris. Hearing Exhibit 6 consists of a Kiawah Island Utility Company water bill presented by Alan Hudson.

⁵ Hearing Exhibit 9 consists of witness Mikell's Direct Testimony Exhibits SBM-1 through SBM-6. Hearing Exhibit 10 consists of witness Mikell's Rebuttal Testimony Exhibits SBM-1 through SBM-3. Hearing Exhibit 11 consists of witness Mikell's Responsive Testimony Exhibits SBM-1 through SBM-2. Hearing Exhibit 12 consists of witness Mikell's Confidential Responsive Testimony Exhibits SBM-1 through SBM-2.

⁶ Hearing Exhibit 8 consists of witness Burnett's Direct Testimony Exhibits BFB-1 and BFB-2.

⁷ Hearing Exhibit 13 consists of witness Walsh's Rebuttal Testimony Exhibits GW-1 through GW-5.

provided public and confidential responsive testimony to the customer testimony at the public night hearing on Callawassie Island.

The ORS presented the direct testimonies of Jakeyla S. James, ORS Auditor, and Kelvin L. Major,⁸ ORS Audit Manager. ORS also presented the direct and surrebuttal testimonies of Michael Seaman-Huynh,⁹ ORS Deputy Director of Energy Operations. Ms. James' and Mr. Major's testimonies described ORS's examinations of the Application and CUC's books and records as well as the subsequent accounting and pro forma adjustments recommended by ORS. Mr. Seaman-Huynh's testimonies focused on CUC's compliance with Commission rules and regulations, ORS's adjustments, proposed rates and OM, recommendations related to the Tax Cuts and Jobs Act ("TCJA"), and the Company's availability fees.¹⁰

Patrick W. Parkinson,¹¹ former Executive Director of the Township of Middleton Sewage Authority and current board member of the Callawassie Island Property Owners Association, gave direct and surrebuttal testimony on behalf of the POAs. POA witness Parkinson provided testimony expressing his concerns with CUC's Application for a rate increase and the Company's operations.

II. Statutory Standards and Required Findings

CUC's Application was filed pursuant to S.C. Code Ann. §§ 58-5-210 & 58-5-240 and 10 S.C. Code Ann. Regs. 103-712.4.A and 103-512.4.A. The evidence

⁸ Hearing Exhibit 15 consists of witness Major's Direct Testimony Exhibits KLM-1 through KLM-8.

⁹ Hearing Exhibit 16 consists of witness Seaman-Huynh's Direct Testimony Exhibits MSH-1 through MSH-6.

¹⁰ ORS Witness Seaman-Huynh filed revised direct testimony on November 6, 2019, to correct a calculation error.

¹¹ Hearing Exhibit 14 consists of witness Parkinson's Direct Testimony Exhibit One.

supporting CUC's business and legal status is contained in its Application, testimony, and in prior Commission Orders in the docket files of the Commission, of which the Commission takes judicial notice. CUC is a closely held corporation organized and existing under the laws of the State of South Carolina and is a public utility within the meaning of S.C. Code Ann. § 58-5-10(3) and its operations in this State are subject to the Commission's jurisdiction over CUC's rates, charges, tariffs, and terms and conditions of service as generally provided in S.C. Code Ann. §§ 58-5-210 *et seq.* (See S.C. Code Ann. § 58-5-210 *et seq.* and Application p. 1, ¶ 1).

CUC furnishes sewer collection and sewer treatment service and water distribution service to 1,298 water customers and 748 sewer customers on Callawassie Island and Spring Island in Beaufort County under the schedule of rates approved by the Commission in Order Number 2014-1001, Docket Number 2013-451-WS, dated December 3, 2014. (Application p. 1, ¶ 1.)

The current rates now in effect, were approved in Commission Order No. 2014-1001, in Docket No. 2013-451-WS. (Commission Order No. 2014-1001 and Application, p. 2, ¶ 3). CUC proposes a Test Year of January 1, 2018 to December 31, 2018. (Application, p. 2, ¶ 4).

The Application, testimony, exhibits, affidavits of publication, and public notices submitted by CUC comply with the procedural requirements of the South Carolina Code of Laws and the Regulations promulgated by this Commission.

The above findings of fact are informational, procedural, and jurisdictional in nature, and the matters involved are not contested by any party.

South Carolina Code Ann. § 58-5-210 provides,

“[t]he Public Service Commission is hereby, to the extent granted, vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State, together with the power, after hearing, to ascertain and fix such just and reasonable standards, classifications, regulations, practices and measurements of service to be furnished, imposed, observed and followed by every public utility in this State and the State hereby asserts its rights to regulate the rates and services of every ‘public utility.’”

S.C. Code Ann. § 58-5-210 (2015).

The Commission must determine a fair rate of return that the utility should be allowed the opportunity to earn after recovery of the expenses of utility operations. The legal standards for this determination are set forth in *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 602-03(1944) (“*Hope*”) and *Bluefield Water Works and Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679, 692-93 (1923) (“*Bluefield*”).

Bluefield holds that:

What annual rate will constitute just compensation depends upon many circumstances, and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting the opportunities for investment, the money market and business conditions generally.

Bluefield Water Works and Improvement Co. v. Public Service Commission of West Virginia, 262 U.S. at 692-93.

When determining an appropriate return for public utilities, this Commission and South Carolina courts have consistently applied the principles set forth in *Bluefield* and *Hope*. In *Southern Bell Tel. & Tel. Co. v. Pub. Serv. Comm'n*, 270 S.C. 590 (1978), quoting *Hope*, the South Carolina Supreme Court held:

...[u]nder the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling...The ratemaking process under the Act, i.e., the fixing of 'just and reasonable' rates, involves the balancing of investor and the consumer interests. *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602-03(1944).

This Commission must exercise its dual responsibility of permitting utilities an opportunity to earn a reasonable return, on the one hand, and protecting customers from rates that are so excessive as to be unjust or unreasonable, on the other, by "(a) Not depriving investors of the opportunity to earn reasonable returns on the funds devoted to such use as that would constitute a taking of private property without just compensation [and] (b) Not permitting rates which are excessive." *Southern Bell*, 270 S.C. at 605.

Additionally, the Commission's determination of a fair rate of return must be documented fully in its findings of fact and based exclusively on reliable, probative, and substantial evidence on the whole record. *Porter v. South Carolina Public Service Commission*, 504 S.E2d 320, 323 (1998).

In CUC's last rate case, this Commission stated:

Rate design is a matter of discretion for the Commission. In establishing rates, it is incumbent upon the Commission to fix rates which "distribute fairly the revenue requirements [of the utility.]" See *Seabrook Island Property Owners Association v. S. C. Public Service Comm'n*, 303 S.C. 493, 499, 401 S.E.2d 672, 675 (1991). Our determination of "fairness" with

respect to the distribution of the Company's revenue requirement is subject to the requirement that it be based upon some objective and measurable framework. See *Utilities Services of South Carolina, Inc. v. South Carolina Office of Regulatory Staff*, 392 S.C. 96, 113-114, 708 S.E.2d 755, 764-765 (2011).

Commission Docket No. 2013-451-WS, Order No. 2014-1001, p. 13.

Although the burden of proof in showing the reasonableness of a utility's costs that underlie its request to adjust rates ultimately rests with the utility, the S.C. Supreme Court has concluded that the utility is entitled to a presumption that its expenses are reasonable and were incurred in good faith. *Hamm v. S.C. Pub. Serv. Comm'n*, 309 S.C. 282, 422 S.E.2d 110 (1992) (internal citations omitted). However, according to *Utils. Servs. of S.C., Inc. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 110, 708 S.E.2d 755, 762–63 (2011) "...[I]f an investigation initiated by ORS or by the PSC yields evidence that overcomes the presumption of reasonableness, a utility must further substantiate its claimed expenditures."

A fundamental principle of the ratemaking process is the establishment of a historical test year as the basis for calculating a utility's operating margin, and, consequently, the amount of the utility's requested rate increase. In order to determine what a utility's expense and revenues are for purposes of determining the reasonableness of proposed rates, one must select a 'test year' for the measurement of the expenses and revenues. *Heater of Seabrook v. Public Service Commission of South Carolina*, 324 S.C. 56, 478 S.E.2d 826, 828 n.1 (1996). While the Commission considers a utility's proposed rate increase based upon occurrences within the test year, the Commission will also consider adjustments for any known and measurable out-of-test year changes in

expenses, revenues, and capital investments, and will also consider adjustments for any unusual situations which occurred in the test year. Where an unusual situation exists showing that the test year amounts are atypical, the Commission should adjust the test year data. *See Southern Bell v. The Public Service Commission*, 270 S.C. 590, 244 S.E. 2d 278 (1978); *see also, Parker v. South Carolina Public Service Commission*, 280 S.C. 310, 313 S.E.2d 290 (1984), *citing City of Pittsburgh v. Pennsylvania Public Utility Commission*, 187 P.A. Super. 341, 144 A.2d 648 (1958); *Southern Bell v. The Public Service Commission*, 270 S.C. 590, 244 S.E.2d 278 (1978).

With regard to the process of ratemaking, “[r]etroactive rate-making is prohibited based on the general principle that those customers who use the service provided by the utility should pay for its production rather than requiring future rate payers to pay for past use.” *Porter v. S.C. Pub. Ser’v Comm.* 328 S.C. 222, 493 S.E.2d 92 (1997) *citing Popowsky v. Pa. Pub. Util. Comm’n*, 164 Pa.Cmwlth. 338, 642 A.2d 648 (1994). The exception to this rule is expenses which are deemed “extraordinary.” The S.C. Supreme Court in *Porter* defined an extraordinary expense as one “that is unanticipated and non-recurring.” *Porter v. S.C. Pub. Ser’v Comm.* 328 S.C. at 231, 493 S.E.2d 92 at 97 (1997).

Finally, according to Commission Regulation § 103-503(B) governing sewerage utilities:

All rates, contract forms, and rules and regulations, proposed to be put into effect by any utility as defined in 103-502(11) shall be first approved by this commission before they shall become effective, unless they are exempt from such approval by statute or other provision of law.

10 S.C. Code Ann. Regs. § 103-503(B) (2007). Likewise, with water utilities, Commission rule and regulation state:

All rates, contract forms, or rules and regulations, proposed to be put into effect by any utility as defined in 103-702(14), shall be first approved by this commission before they shall become effective, unless they are exempt from such approval by statute or other provision of law.

10 S.C. Code Ann. Regs. § 103-703(B) (2007). The findings of facts and conclusions of the Commission herein reflect these standards.

III. Review of the Evidence and Evidentiary Conclusions

After evaluation of the positions of the parties, the Commission reaches the legal and factual conclusions below based on its review of the facts and evidence of record. The Commission shall consider a fair Operating Margin for CUC based on the record and any increase must be just, reasonable and free of undue discrimination. The evidence supporting the CUC's business and legal status is contained in the Application filed by CUC, testimony, and in prior Commission orders in the docket files of the Commission, of which the Commission takes judicial notice.

The Application

1. CUC is a water and sewer utility providing water and sewer service in its assigned service area in and around Callawassie Island and Spring Island, South Carolina. CUC's operations in South Carolina are subject to the jurisdiction of the Commission, under S.C. Code Ann. § 58-5-10 *et. seq.*

2. CUC's current rates were established by the Commission in Commission Order No. 2014-1001, Docket No. 2013-451-WS, issued on December 3, 2014. The

application causing those rates was based on a test year beginning on January 1, 2013 and ending December 31, 2013.

3. In this Application, CUC requested an increase in operating revenues of \$238,004 for its combined operations to produce net operating income of \$177,781 after the proposed increase.¹² CUC's Application would have resulted in a 18.75% overall increase and about 3.5% per year in projected operating revenue from Commission Order 2004-1001 (e.g. 2013 Test Year) on which CUC rates are currently based and the 2018 Test Year used for this Application. Tr. p. 117.7 (Mikell Direct, p. 7, ll. 1-4).

4. After agreed upon adjustments, CUC's request becomes an increase of \$211,475 in operating revenues with an operating margin of 15.17%.

5. CUC proposed a test year beginning January 1, 2018 and ending December 31, 2018. The ORS accepted the 2018 historical test year proposed by CUC and it was used by both the Company and the ORS in this proceeding. The POAs did not contest the use of this test year. Based on the information available to the Commission and that all parties agreed to a 2018 test year, the Commission is of the opinion, and therefore concludes, that the test year ending December 31, 2018, is appropriate for the purposes of this rate adjustment request.

Accounting Adjustments

6. The Commission adopts those adjustments with which no party disagreed as they are just and reasonable, and we proceed to consider the adjustments upon which

¹² See Application, Exhibit D, Pro Forma Income and Expense Statements.

the parties could not agree below. The parties differed on Adjustment 17 concerning TCJA and a proper operating margin.

7. CUC updated its rate case expenses at the conclusion of the hearing, and they were reviewed by the ORS. CUC and ORS agree the Company's rate case expenses shall be amortized over a three-year period, in the amount of \$12,766 per year. The Commission finds this amount is reasonable.

8. The ORS proposed several of accounting adjustments to CUC's Application. Tr. pp. 226.5-226.17 (Major, Direct, pp. 5-17). CUC agreed with all but one of the proposed adjustments except for Adjustment 17 by the ORS.¹³

9. In its Adjustment 17, ORS proposes an adjustment to reflect the decreasing corporate tax effects of the TCJA.¹⁴

10. On December 22, 2017, the TCJA was signed into law. (MSH Revised Direct, p. 9, l. 9). The TCJA decreased the corporate tax rate from 35% to 21%, effective January 1, 2018. [MSH Revised Direct, p. 9, ll. 9-11 & p. 10, ll. 3-4; Tr. p. 236.10 (Seaman-Huynh Rev. Direct, p. 10, l. 1-18)]. Many South Carolina utilities under the jurisdiction of this Commission recover federal corporate income tax expenses at a corporate tax rate above 21% because federal income tax is a component of rates approved by the Commission. (MSH Revised Direct, p. 9, ll. 11-13).

11. On April 25, 2018, the Commission issued Order No. 2018-308 in Docket No. 2017-381-A, which required all utilities to calculate and defer the tax effects

¹³ In its Adjustment 17, ORS proposes an adjustment to reflect the effects of the TCJA with which CUC disagrees. R. p. 226.10 (Major, Direct p. 10, ll. 8-13).

¹⁴ In its Adjustment 17, ORS proposes an adjustment to reflect the effects of the TCJA with which CUC disagrees. R. p. 226.10 (Major, Direct p. 10, ll. 8-13).

resulting from the TCJA beginning January 1, 2018, with those impacts to be addressed in the next general rate case.¹⁵ (MSH Revised Direct, p. 9, ll. 14-17).

12. As a result of a reduced current federal income tax expense, Mr. Seaman-Huynh testified that CUC collected from its customers federal income taxes that the Company will never pay the government. (MSH Surrebuttal, p. 2, ll. 8-9). He further testified that, in compliance with Commission Order No. 2018-308, ORS calculated the deferred effects of the TCJA into a regulatory liability. (MSH Revised Direct, p. 10, ll. 7-8). The deferral included the differences between customer revenues actually billed by CUC and what CUC would have billed customers considering the reduced federal corporate tax rate beginning January 1, 2018. (MSH Revised Direct, p. 10, ll. 8-11). ORS utilized the Commission-approved cost of service in Order No. 2014-1001 to calculate the excess revenues collected since January 1, 2018. (MSH Revised Direct, p. 10, ll. 11-12).

13. In Adjustment No. 17, the ORS proposes that CUC refund \$78,110 for what ORS calls “excess revenues” in three yearly installments of \$26,307. Tr. p. 236.10 (Seaman-Huynh Rev. Direct, p. 10, ll. 5-18 and Seaman-Huynh Surrebuttal, p. 10-15). ORS calculated excess revenues by applying the TCJA’s 21% corporate income tax rate to the Company’s projected taxable income as of the conclusion of 2013, as reflected in the Commission’s Order No. 2014-2011, rather than 2018. *Id.* ORS’s recommendation that this amount be returned to customers over a three (3) year amortization period is consistent with its recommendation for the recovery of rate case expenses in this case.

¹⁵ During the hearing the Commission took Judicial Notice of its Order No. 2018-308.

(Seaman-Huynh Revised Direct, p. 10, ll. 15-16). Using 2013 rather than the 2018 current operating experience, ORS's recommendation results in an annual return of approximately \$26,037, which is reflected in ORS witness Major's Exhibit KLM-4, Adjustment No. 17. (Seaman-Huynh Revised Direct, p. 10, ll. 16-18).

14. CUC disagrees with ORS' Adjustment 17 and its calculations and presented evidence to support its position. On cross-examination, Mr. Seaman-Huynh testified that ORS calculated its proposed refund based on the revenue approved in Order No. 2014-2011, instead of the 2018 taxable income it calculated during its audit performed in this case, because these were the last revenues approved by the Commission. Tr. p. 245.

15. CUC provided evidence demonstrating that the ORS calculated its proposed refund by applying the new 21% corporate tax rate to the Company's 2014 taxable income of \$238,296, instead of the Company's 2018, taxable income of \$101,815. *Id.* and Exhibit MSH-4. The result is significant. If the ORS used the Company's 2018 taxable income to calculate the refund (the year the TCJA took effect), the total refund amount would have been \$33,508 instead of \$78,110. *Id.* and Tr. p. 182.4 (Walsh Rebuttal, p. 4). Mr. Walsh also asserted that a refund would amount to retroactive ratemaking since the tax reform occurred January 1, 2018 and not in 2014.

16. CUC contends the TCJA did not result in any excess revenues for the Company, because the Company earned well below its authorized rate of return after the TCJA took effect. Tr. pp. 182.2-182.3 (Walsh Rebuttal, pp. 2, l. 9 – 3, l. 4). According to the ORS, CUC earned a 5.44% operating margin during the 2018 test year, which was the

same year the new tax rate took effect. Appendix A. Therefore, CUC reasons there are no “excess revenues” to refund as a result of the new law. *Id.*

17. In the alternative, CUC contends that any refund of “excess revenues” should be computed based on a reduction of its actual tax liability during 2018. Tr. pp. 182.3-182.4 (Walsh Rebuttal, pp. 3, l. 5 - 4, l. 3). CUC argues that ORS has audited the Company’s financials in this rate case, and the test year’s financials, which coincide with the TCJA going into effect, are the most reliable numbers from which to base a refund. *Id.* Using revenue projections from 2014, the Company points out, has the effect of artificially inflating the refund amount because the Company’s expenses were lower, and its net taxable income higher, five years ago. TR. p. 182.4 (Walsh Rebuttal, p. 4).

18. ORS witness Seaman-Huynh testified that the change in the federal tax rate was extraordinary, beyond the control of CUC, and caused a material known and measurable change in the Company’s federal income tax expense. (Seaman-Huynh Surrebuttal, p. 2, ll. 6-8). Mr. Seaman-Huynh further testified that ORS’s recommendation to provide CUC customers with the full benefit of the TCJA does not depend upon or consider the Company’s earnings. (MSH Surrebuttal, p. 3, ll. 7-8). The OM approved by the Commission is representative of a reasonable return the Company has the opportunity to earn if it operates efficiently but it is not guaranteed. (MSH Surrebuttal, p. 3, ll. 17-19).

19. While CUC contends it owes no refund, CUC’s reduction in tax liability is calculated to be \$33,508. *Id.* If found to owe a refund, CUC states the reduction in tax liability can be refunded to customers in a one-time bill credit. *Id.* CUC cites the

Commission's Order No. 2018-288, in Docket No. 2018-257-WS in which it approved a refund according to this method as justification for this approach. *Id.*

20. The Commission agrees with CUC that a refund of excess revenues from the TCJA should be based on the reduction in taxes from which the Company benefitted when the Act took effect. Therefore, the calculation of the refund should be based on the Company's current operating experience (i.e., 2018 test year expense), instead of the Company's operating experience as approved in Commission Order No. 2014-1001. (Gary Walsh Rebuttal, p. 3, ll. 16-18). CUC witness Walsh calculates a refund of \$33,508 as a result of TCJA using the Company's current operating experience. (Gary Walsh Rebuttal, p. 4, ll. 6-8).

21. Additionally, CUC witness Walsh testified about a 2018 Test Year audit conducted by ORS in this case which is more recent than the 2014 audit, and as a result, that more recent audit should be used to calculate a refund. (Gary Walsh Rebuttal, p. 3, ll. 19-21, p. 4, ll. 1-3). Mr. Walsh calculated the refund (\$33,508) due to customers using the operating experience proposed by ORS in witness Major's exhibit KLM-1. (GW Rebuttal, p. 4, l. 6). Mr. Walsh also testified that this method was utilized in a previous case in which the parties reached a Memorandum of Understanding.¹⁶ (Gary Walsh Rebuttal, p. 4, ll. 10-13).

22. POA witness Parkinson testified that he did not agree with Mr. Walsh's testimony that CUC customers should only receive a refund of \$33,508, but he agreed

¹⁶ See Commission Order No. 2019-288, Docket No. 2018-257-WS.

with ORS's recommendation based on 2014 rather than 2018. (Parkinson Surrebuttal, p. 1, ll. 6-14).

23. CUC customer witness Fearer testified that he has experience in accounting and that it would be fair to have the incomes derived as a result of a tax cut returned to customers. (Nt. Hearing Tr. p. 33, ll. 22-25, p. 34, ll. 1-4). Additionally, CUC customer witness McKee, when discussing the public utility that he previously owned, testified that the lowering of the tax rate was passed through to customers and triggered a lowering of the overall rate. (Nt. Hearing Tr. p. 87, ll. 2-10). According to witness McKee, when the tax rate was lowered from 35% to 21%, the utility issued a refund to its customers. (Nt. Hearing Tr. p. 88, ll. 7-15).

24. The Commission finds that the Company's refund calculation and its proposal to refund the \$33,508 to its customers in either a one-time bill credit, or in two yearly installments of \$16,754, is appropriate. Therefore, Commission finds that the CUC shall refund the \$33,508 to customers who were a customer during the time CUC collected the excess revenue. The refund shall be made by (a) refund check, or (b) in a one-time bill credit, or in two yearly installments of \$16,754; however, the Company must notify the Commission which option CUC chooses. To the extent that a customer entitled to a refund is no longer on the system and cannot be located, refunds must be handled pursuant to the South Carolina Uniform Unclaimed Property Act. S.C. Code Ann. §§27-18-10 *et. seq.*

25. Another facet of the TCJA is a change in income tax liability for Contributions in Aid of Construction ("CIAC"). CUC has proposed to collect its tax

liability on CIAC by using the “full gross-up method” on a going-forward basis. Tr. pp. 182.5-182.6 (Walsh Rebuttal, pp. 5, l. 16 – 6, l. 7). The ORS does not object to the Company’s proposal. The Commission has recognized the full gross-up method in Order No. 88-237 as an appropriate way to address tax liability and finds it appropriate for CUC. CUC is authorized to collect a water tap fee of \$699.51 and a sewer tap fee of \$832.75 and will file a tariff reflecting the new charges within thirty (30) days of the entry of this Order.

Operating Margin

26. The Company proposed the Operating Margin (“OM”) method. The parties did not present evidence on a capital structure for the Company, or what would constitute a fair return on equity or return on rate base. The Operating Margin method was not disputed by any party; in fact, there was no evidence provided to support the use of a method other than the operating margin method. The evidence, including the testimony of witnesses Walsh, Major, and Seaman-Huynh, supports the use of an OM methodology.

27. The parties presented evidence on the revenues and expenses of the Company and provided operating margins for the Company on per books, as adjusted after accounting and pro forma adjustments, and after the proposed increase. Operating margin is determined by dividing net operating income by the total operating revenue of the utility. *Heater of Seabrook, Inc. v. Public Serv. Comm’n*, 332 S.C. 20, 503 S.E.2d 739 (1998). The Commission finds the OM methodology is appropriate to utilize for determining the lawfulness of the CUC’s rates and in fixing just and reasonable rates.

28. CUC requested a revenue increase that would result in a potential Operating Margin of 15.18%. Application, Exhibit D. According to the Application, CUC asserts that an increase in rates is needed because it has experienced an increase in operating expenses and a decrease in revenues.

29. CUC's witness, Gary Walsh, supported the Company's proposed OM by pointing out the utility offers excellent service and has an unblemished record of compliance with environmental regulations. Mr. Walsh is a regulatory accountant, and a former Executive Director of the Public Service Commission, who has testified before the Commission on regulatory issues on many occasions. Tr. p. 182.1, Exhibit 13 (Walsh Rebuttal, pp. 1, l. 4 – 2, l. 5).

30. The ORS proposed an operating margin of 12.51%. Tr. p. 236.6 (Seaman-Huynh Direct, p. 6, ll. 8-10). ORS testified that the OM recommendation of 12.51% in this proceeding is based on the "current operations, excellent customer service, and current financial condition" and that a 12.51% is sufficient to maintain efficient, high-quality, and reliability utility service provided to CUC's customers. (Seaman-Huynh Revised Direct, p. 6, ll. 9-10 & ll. 19-22, p. 6, l. 23, p. 7, ll. 1-3).

31. The ORS's recommended OM of 12.51% is the same as approved by the Commission in a settlement of the Company's last case. See Order No. 2014-1001.

32. Mr. Seaman-Huynh testified "ORS based its operating margin recommendation on the quality of service the utility provides and the characteristics of the utility's financial condition and operational performance." Tr. p. 236.6 (Seaman-Huynh Direct, p. 6, ll. 19-22). Mr. Seaman-Huynh further testified that CUC's

Application neither detailed any significant infrastructure or facility investments during the Test Year¹⁷ nor did it indicate that CUC faces additional risk or seeks to attract additional capital. (MSH Surrebuttal, p. 4, ll. 10-13).

33. Mr. Seaman-Huynh testified “CUC is a well-operated water and sewer utility with an established record of providing quality service to its customers.” Tr. pp. 236.6-236.7 (Seaman-Huynh Direct, pp. 6, l. 23 – 7, l. 1). CUC “demonstrated sound financial practices and provided reliable service to its customers.” Tr. p. 236.7 (Seaman-Huynh Direct, p. 7, ll. 2-3). The ORS acknowledges CUC’s record of “efficient operations, excellent customer service, and current financial condition” Tr. 236.6 (Seaman-Huynh Rev. Direct, p. 6, ll. 8-10). CUC’s water system is designed and maintained to provide fire protection through 103 hydrants to its customers. Tr. p. 106.3 (Burnett, pp. 3, l. 14 – 4, l. 2). The Company has not received a notice of violation from DHEC since its last rate case in 2014 and has never been fined for an environmental violation in 35 years of operation. Tr. p. 106.7 (Burnett Direct, p. 7, ll. 1-8). Mr. Seaman-Huynh further testified that the Company is able, as a result of its efficient management, to maintain high-quality, reliable water and sewer service at its current OM. (MSH Surrebuttal, p. 4, ll. 13-15).

34. When establishing rates, this Commission must consider numerous factors. The longstanding principle established by the South Carolina Supreme Court states that “[t]he PSC should establish rates that will produce revenues for the utility ‘reasonably sufficient to assure the confidence in the financial soundness of the utility ...

¹⁷ The Test Year is January 1, 2018 to December 31, 2018. Application, p. 2, ¶4.

and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.’ *Kiawah Property Owners Group v. Public Service Com’n of South Carolina*, 395 S.C. 105, 109, 597 S.E.2d 145, 147 (2004) citing *Bluefield Water Works and Improvement Co. v. Pub. Serv. Comm’n of West Virginia*, 262 U.S. 679, 693, 43 S.Ct. 675, 679, 67 L.Ed. 1176 (1923).

35. Additionally, *Bluefield, supra*, requires that this Commission, employ an analysis that takes into consideration all relevant facts, rather than one that emphasizes a single data set to the exclusion of all others. Additionally, the decision of this Commission is based on the evidence presented to it by the parties and placed into the record.

36. Mr. Seaman-Huynh testified that, “[t]he Commission has discretion to consider ... items in establishing a reasonable operation margin such as: 1) the timing of approval for the most recent operating margin; 2) specific Company characteristics such as capital investments and possible revenue growth; and, 3) regulatory and other risks experienced by the Company.” (MSH Surrebuttal, p. 8, ll. 19-23). While a review of other utilities’ OMs may be illustrative, it is not appropriately relied upon when determining the OM to award CUC. This is especially true in this proceeding because there is no evidence in the record that can allow this Commission to determine that the utilities reviewed by Mr. Walsh are similarly situated to CUC, which could render a

comparative analysis helpful.¹⁸ This Commission agrees with Mr. Seaman-Huynh and Ms. Mikell that considering the average OM of other regional utilities is useful, but not dispositive when determining the OM of an individual utility.

37. While this Commission is not beholden to *stare decisis*, it may not act arbitrarily in following established precedent. See 330 Concord St. Neighborhood Ass'n v. Campsen, 309 S.C. 514, 517–18, 424 S.E.2d 538, 539–40 (Ct. App. 1992), “[a]n administrative agency is generally not bound by the principle of *stare decisis*, but it cannot act arbitrarily in failing to follow established precedent.” This Commission has traditionally sought to promote the efficient management of public utilities and minimize opportunity for waste by setting rates “designed to discourage the wasteful use of public utility services while promoting all use that is economically justified in view of the relationships between costs incurred and benefits received.”¹⁹

38. The great weight of the evidence in the record supports and requires the Commission to award and find an OM that is 12.51%, as recommended by the ORS, is appropriate. The analysis presented by ORS consists of a consideration of average OMs awarded by this Commission as well as other relevant facts, including the financial condition of CUC and an incentive to encourage efficient management and minimize waste. This Commission must consider all relevant facts when determining just rates.²⁰

¹⁸ See Heater of Seabrook, Inc. v. Public Service Com’n of South Carolina, 332 S.C. 20 26, 503 S.E. 2d 739, 743 (1998), absent evidence in the record regarding a comparison utility, the Court found it impossible to conduct any meaningful review on the comparison findings.

¹⁹ See Order No. 1982-2, p. 51.

²⁰ See Bluefield, “[w]hat annual rate will constitute just compensation depends upon many circumstances, and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts.”

Additionally, the Company provided no plans, estimates, capital expenditures, or known and measurable changes on which this Commission could justify increasing CUC's current OM.

Availability Fees

39. According to the testimony of ORS witness Seaman-Huynh, CUC does not currently have a water and sewer Availability Fee approved by the Commission; however, during the 2018 Test Year, CUC received approximately \$38,892 in revenue associated with Water and Sewer Availability Fees and late fees on availability fees. (MSH Revised Direct, p. 12, ll. 1-3). Mr. Seaman-Huynh further testified that this revenue was included as Miscellaneous Revenue and used to off-set operating expenses. (MSH Revised Direct, p. 12, ll. 4-5).

40. If CUC intends to charge availability fees, ORS recommended the Company establish a specific rate and tariff language for water and sewer Availability Fees and seek approval of these rates by the Commission. (Seaman-Huynh Revised Direct, p. 12, ll. 15-16). ORS added that availability fees collected by CUC can benefit its customers by off-setting expenses used to calculate rates.

41. CUC witness Mikell testified that CUC charges \$4 per month to have water service available and \$4 per month for the availability of sewer service to owners of undeveloped lots in its service territory. Tr. p. 122.3 (Mikell Rebuttal, p. 3, ll. 1-13). These fees totaled \$38,892 during the 2018 test year and were included in the calculation of the Company's revenue requirement. *Id.* The Availability Fees are not included in the Company's tariff.

42. CUC responded that it billed \$39,135 related to Availability Fees during the test year, \$14,168 for water availability, \$12,936 for sewer availability, and \$12,031 in late charges. However, CUC only collected \$22,501. *Id.*

43. Ms. Mikell testified that CUC wants to fully eliminate availability fees. (Mikell Rebuttal, p. 3, l. 3). Witness Mikell testified that the availability fees are difficult to collect, and CUC no longer needs them to operate the company.

44. POAs witness Parkinson testified that he agreed with ORS's position that Availability Fees. (Parkinson Surrebuttal, p. 1, ll. 17-18). Mr. Parkinson further stated that CUC collected a significant amount of revenue, \$22,501, during the Test Year to offset expenses which CUC would then have their water and sewer customers make up if this fee is eliminated. (Parkinson Surrebuttal, p. 1, l. 18, p. 2, ll. 1-2). Finally, Mr. Parkinson testified that the water and sewer customers already pay extremely high fees and eliminating Availability Fees is an additional burden on them as CUC must make up the revenue elsewhere; and therefore, the POAs oppose their elimination. (Parkinson Surrebuttal, p. 2, l. 2-4).

45. As testified by witness Ms. Mikell, the Commission agrees with her statement and CUC's position "to eliminate" the charging of Availability Fees. Tr. p. 119, ll. 6-7).

CUC's Operating Expenses

46. POAs presented their recommendations through the testimony of Patrick Parkinson. The Commission heard from 26 customers of CUC at its public night hearing

on December 9, 2019. Most customers voiced support for the Mr. Parkinson's recommendations.

47. Mr. Parkinson is the former Executive Director of the Township of Middletown Sewer Authority ("MSA"), in Middletown New Jersey. R. pp. 200.1-200.2 (Parkinson Direct, pp. 1, l. 10 – p. 2, l. 3). He served in that position from 1997-2012. R. p. 204.

48. The POAs argued that CUC's operating expenses are too high and proposed several measures they contend would save money and mitigate the Company's need to raise rates. R. p. 200.3 (Parkinson Direct, p. 3, l. 1-11).

49. Mr. Parkinson proposed that a 16% reduction in rates could be achieved through staffing cuts and cost-cutting measures. *Id.*

50. Mr. Parkinson testified that CUC should close its office in Florence, South Carolina, and eliminate the four positions at that location: President, Vice-President, and two office assistants. R. pp. 200.5-200.7 (Parkinson Direct, pp. 5, l. 4 – 7, l. 2). He estimated the savings from these measures at \$280,154. *Id.*

51. Mr. Parkinson proposed upgrading the Operations Manager's position in Beaufort to a General Manager's position and increasing the annual salary by \$30,000. *Id.*

52. Mr. Parkinson would also upgrade the Office Manager position to the Director of Administration and Finance and increase the salary of the position by \$25,000. *Id.*

53. Mr. Parkinson would eliminate the two Office Assistant positions, claiming to save \$75,950. *Id.*

54. Mr. Parkinson contends most of the Company's administrative work is done at its Callawassie Island office, and there is no reason for CUC to maintain the Florence office. R. pp. 200.5-200.6 (Parkinson Direct, pp. 5, l. 17 – 6, l. 3).

55. According to CUC witness Mikell, CUC built its Florence office in 1997 as annex to her home. Her father, the Company Vice-President, lives nearby, so he can visit the office easily. The Company pays \$300 per month in rent, less than it would have to pay to rent an office elsewhere. CUC handles accounting, billing, payroll, insurance, taxes, reporting. R. p. 122.7 (Mikell Rebuttal, p. 7, ll. 1-13).

56. Ms. Mikell testified that, while CUC has two administrative employees in the Florence office, it only included one of the positions in arriving at its revenue requirement. The cost of the second position, \$25,320 in salary and \$5,415 in health insurance, is borne by the shareholders. R. pp. 122.4-122.5 (Mikell Rebuttal, pp. 4, l. 11 – 5, l. 6).

57. During the hearing, ORS's audit manager, Kelvin Major, confirmed that for ratemaking purposes, the number of employees did not increase since CUC's last application. R. p. 263, l. 11-23.

58. Ms. Mikell testified that the employees of the Callawassie Island office do not have the time to take over the functions of the Florence office in addition to their current duties. She pointed out that CUC's Operations Manager is responsible for system maintenance tasks, including operating a backhoe, reading meters, and performing

repairs. Ms. Mikell does not believe it would be possible to hire an employee who could perform these duties and assume the administrative duties of the Florence office. R. p. 122.6 (Mikell Rebuttal, p. 6, ll. 1-21).

59. In response to Commissioners' questions, Mr. Seaman-Huynh, testified it is not unusual for utilities to perform administrative functions in a separate business office. R. p. 261, ll. 2-13. He testified ORS did not find CUC's staffing levels extravagant or abnormal. R. p. 264, ll.8-11.

60. The ORS proposed adjustments to CUC's total operating expenses in the amount of (\$19,555), which were adopted and agreed upon by CUC. ORS testified to the following recommended operating expense adjustments:

61. Salaries and Wages – ORS and CUC proposed to annualize salaries and wages, remove an employee included in Test Year expenses and remove bonuses paid to officers and managers during the Test Year. ORS annualized salaries and benefits using actual pay stubs and benefit cost and enrollment data as of July 2019. ORS computed its salaries and wages adjustment using annualized salaries of \$435,315, less the portion of operator salaries that were capitalized for the installation of water and sewer taps of \$2,131, less the per book salaries and wages of \$476,499, resulting in an ORS adjustment of (\$43,315). (Major Direct, p. 5, ll. 11-17).

62. Employee Pensions and Benefits – ORS and CUC proposed to annualize 401K expense and health insurance. ORS annualized 401K expense based on the Company's 401K matching policy and actual employee contributions. ORS annualized health insurance based on the health insurance premiums as of October 1, 2019. ORS

calculated allowable 401K and health insurance expense of \$214,328. This amount, less the portion of operator pensions and benefits that were capitalized for the installation of water and sewer taps of \$1,085, less the Company's per book pensions and benefits amount of \$204,488, yields an ORS adjustment of \$8,755. ORS's adjustment differs from the Company's adjustment due to an employee changing their health insurance coverage. (Major Direct, p. 5, ll. 18-23, p. 6, ll. 1-3).

63. Purchased Water Costs – ORS and CUC proposed to adjust purchased water costs for the rates charged by Beaufort-Jasper Water & Sewer Authority. ORS's adjustment updated purchased water costs to the most current rate effective as of July 2019. This resulted in an adjustment of \$12,727. (Major Direct, p. 6, ll. 4-7).

64. Postage Expenses – ORS and CUC proposed to adjust postage expenses to reflect the increase in postage and meter rental rates. ORS's adjustment updated the postage expense to the most current postage and meter rental rates as of 2019. This resulted in an adjustment of \$576. (Major Direct, p. 6, ll. 8-11).

65. Maintenance Expenses – ORS and CUC proposed an adjustment to remove and capitalize maintenance expenses. ORS reviewed invoices for maintenance expenses the Company proposed to be capitalized. ORS determined ultraviolet ("UV") bulbs did not meet the criteria to be capitalized due to their estimated service life of only one year and should remain in maintenance expense. ORS did not include \$845 related to the UV bulbs and freight in the calculation of its adjustment. The total adjustment proposed by ORS was (\$1,084). (James Direct, p. 2, ll. 15-21).

66. Contractual Services– ORS and CUC proposed to adjust contractual services by (\$1,691) to reflect the increase in lab testing fees and the removal of fees associated with the Department of Health and Environmental Control Safe Drinking Water Act. (Major Direct, p. 6, ll. 15-17).

67. Transportation Expenses – ORS and CUC proposed an adjustment to transportation expense to reflect the removal of officer expenses and the addition of gas allowances based on mileage using the methodology approved in Order No. 2014-1001. Gas allowance for the officers was calculated using the 2019 federal mileage rate of \$.58 for a total of \$8,352. Officer expenses incurred during the Test Year related to gas, travel, vehicle, and miscellaneous expenses of \$6,122 were removed. The Company also proposed an adjustment of \$1,200 to include a gas allowance for an employee that did not have a gas card during the 2018 Test Year. ORS did not include the \$1,200 in the calculation of its adjustment as other operators purchased the employee's gas using their authorized gas cards during the 2018 Test Year. Therefore, the gas purchased for this employee is already included in transportation expense for the 2018 Test Year. ORS also removed \$63 of gas expense in its calculation as this expense is capitalized as part of tap installation cost. ORS proposed a total adjustment of \$2,167. (James Direct, p. 2, ll. 22-25, p. 3, ll. 1-10).

68. Insurance Expenses – ORS and CUC proposed an adjustment to increase insurance to reflect new vehicles purchased after the 2018 Test Year and remove insurance on the officer's vehicle. ORS reviewed invoices for insurance for four (4) new trucks the Company purchased, as well as, the officer's vehicle the Company proposed to

remove. Based on the review performed, total insurance paid in 2019 was \$14,290. ORS and the Company removed the insurance related to the officer's vehicle of \$2,731 and subtracted the Test Year vehicle insurance expense of \$11,706. In addition, ORS removed \$133 of insurance expense as this expense is capitalized as part of the tap installation cost. ORS proposed a total adjustment of (\$280). (James Direct, p. 3, ll. 11-19).

69. Miscellaneous Expenses – ORS and CUC proposed to adjust miscellaneous expenses to remove cell phone expenses for non-utility employees. ORS reviewed the Company's cell phone bills during the 2018 Test Year and removed amounts associated with non-utility employees, yielding an adjustment of (\$844). (Major Direct, p. 7, ll. 1-4).

70. Sludge Removal Expenses – ORS and CUC proposed an adjustment to sludge removal expense to normalize the Test Year. The Company used a two-year average of expenses for 2017 and 2018 to calculate its adjustment. ORS used a three-year average, August 2016 through July 2019, of sludge removal expenses to calculate its adjustment. An average was used to normalize sludge removal expenses for the Test Year as they were abnormally low due to high rain fall, and the Company could not haul sludge in those conditions. ORS calculated a three-year average amount of \$16,299, less the per book amount of \$9,955, for a total ORS adjustment of \$6,344. (James Direct, p. 3, ll. 20-23, p. 4, ll. 1-4).

71. Chemical Expenses – ORS and CUC proposed to adjust chemical expenses to reflect an increase in the cost of chemicals. ORS annualized the average

quarterly chemical expenses incurred during the first and second quarters of 2019, resulting in allowable chemical expenses of \$6,197, less per book chemical expenses of \$6,111, yielding an adjustment of \$86. The Company's adjustment annualized only first quarter of 2019 chemical expenses. (Major Direct, p. 7, ll. 8-12).

72. Miscellaneous Non-Utility Expense (Nonallowables) – ORS proposed an adjustment of (\$2,996) to remove expenses ORS identified as non-allowable for ratemaking purposes. ORS removed \$90 for an expense for which the Company provided no invoice, \$309 of expenses with no stated business purpose, \$230 in late fees, \$1,990 of credit card interest, and \$377 for donations, sponsorships, and other non-utility expenses recorded in the non-utility plant account. The Company's adjustment removed a non-utility account in the amount of \$547, which was included in the calculation of ORS's adjustment. (Major Direct, p. 7, ll. 13-19).

73. The Commission finds that CUC's personnel and office expenses are not excessive or unreasonable. The ORS reviewed the Company's operations in Florence and at Callawassie Island, and found CUC is appropriately staffed. Ms. Mikell testified that the Florence Office handles back office functions which cannot be performed or assumed at Callawassie by itself without an increase in staff. Tr. p. 120, l. 2 – p. 121, l. 2).

74. Mr. Parkinson also recommended CUC require its employees pay 28% of their health insurance premiums, which he estimated at \$27,775. A recommendation echoed by several witnesses at the public night hearing. R. 200.5 (Parkinson Direct, p. 5, ll. 3 - 7). In Mr. Parkinson's opinion, employee contributions towards health insurance is a normal practice in the United States. R. p. 202.4 (Parkinson Surrebuttal, p. 4, l. 11-19).

75. Ms. Mikell testified CUC considers health insurance a key benefit in its employee compensation plan and one reason the Company has retained employees in a competitive job market. R. p. 122.8 (Mikell Rebuttal, p. 8, ll. 1 – 13). She pointed out the plan has \$1,500 single and \$3,000 family deductibles and a \$4,000 out-of-pocket maximum in-network and \$8,000 out-of-pocket maximum out of networks. *Id.* In her view, health insurance must be viewed as a component of the Company's overall compensation package, which also included a 401(k)-retirement plan, for which the Company matches employee contributions up to 10% of salary. *Id.* CUC employees also receive 14 days of paid vacation per year. CUC employees receive sick leave. *Id.*

76. On cross-examination, Mr. Parkinson agreed that health insurance is only one part of an employee compensation package. R. pp. 203, l. 21 – 204, l.1. He also conceded there were several key differences between the compensation and benefits of the MSA and CUC. For instance, employees in Middletown were unionized and had a collective bargaining agreement with MSA. R. pp. 204, l. 19 – 205, l. 9. They also had a defined benefit lifetime pension plan, up to 21 days of paid vacation each year, several paid holiday, 12 days of paid sick leave. R. pp. 206, ll. 1-7; 207, ll. 4-20. Upon retirement, MSA workers were paid 50% of the value of up to 120 days of unpaid sick leave. *Id.* MSA workers received premiums for having professional licenses. R. p. 206, ll. 8-10. They also had three paid personal leave days, besides paid vacation. R. p. 206, l. 11-12. MSA employees also received free uniforms and cleaning services. R. pp. 206, ll. 25-207, l. 4. MSA employees and their dependents up to age 23 had health insurance coverage, which continued as a post-retirement benefit for employees with a certain

amount of service. R. p. 207, ll. 1 – 208, l. 25. MSA employees began paying for a part (he did not say how much) of their health insurance premiums when the New Jersey legislature required it of government employees as a matter of law in 2011. R. p. 208, ll. 7-12.

77. While Mr. Parkinson testified to his experience with the MSA, he conceded health insurance is but one component of a compensation package, and CUC's compensation package differs greatly from the one offered by the entity he managed. To single out health insurance benefits in isolation would be unreasonable and arbitrary. The Commission has been presented with no evidence of local market conditions that suggests CUC's employee compensation is unreasonable or imprudent.

78. The law requires that if departing from past practice, the Commission must have reasonable justification. See 330 Concord St. Neighborhood Ass'n v. Campsen, 309 S.C. 514, 517–18, 424 S.E.2d 538, 539–40 (Ct. App. 1992), “[a]n administrative agency is generally not bound by the principle of *stare decisis*, but it cannot act arbitrarily in failing to follow established precedent.”

79. This Commission has often reviewed an applicant utility to determine whether action or inaction rose to the level of imprudence. According to previous Commission Order No. 2005-42, this Commission's analysis may “involve a review of the management decisions, and this Commission has no authority to manage the utility.”²¹ In that case, the Commission refused to manage the day-to-day

²¹ See Order No. 2005-42, p. 31.

operations of the utility; however, it did state that, “this Commission can require utilities under its jurisdiction to investigate various avenues or strategies to assist the utility.” Id.

80. While, witnesses for CUC and ORS testified that with ORS’s adjustments, the expenses were reasonable and that CUC agreed with -- and accepted -- all of ORS’ adjustments but for the adjustments regarding to Operating Margin and to TCJA, the POAs’ witnesses presented plans that involved downsizing and a reduction to expenses. This Commission is cognizant of the fact that CUC may have areas in which it could reduce certain expenses, however, it will not manage the day-to-day operations of CUC. While Mr. Parkinson testified that CUC’s expenses were too high, the record generally reflects that CUC is a well-operated water and sewer utility with an established record of providing quality service to its customers.

81. ORS witness Seaman-Huynh testified that over the passage of time an inequity exists in the rate design between CUC’s water and sewer customers. (Seaman-Huynh Revised Direct, p. 6, ll. 1-2). According to the testimony presented by ORS, water customers are subsidizing sewer customers even though not all water customers receive sewer service from CUC. (Seaman-Huynh Revised Direct, p. 6, ll. 2-4). Mr. Seaman-Huynh further recommended CUC conduct a cost of service study prior to its next rate case to assist CUC in proposing a rate design that will gradually eliminate the subsidization of sewer service by water customers. (Seaman-Huynh Revised Direct, p. 6, ll. 1-7).

82. Upon question by the Commission, CUC witness Mikell testified that she understood ORS's concern and that having a cost of service study done was something CUC would consider. (Tr. p. 167, ll. 2-15.)

83. One customer testified he would like to see more information about his charges on CUC's bill. R. pp. 78, l. 20 - 80, l. 4. CUC's bill shows usage for the past 12 months, but it does not break out the base facilities charge from the volumetric charge. Ms. Mikell said the Company will explore the possibility of providing more detailed information on its bills. R. p. 126.2 (Mikell Resp. p. 2, l. 7-12.). The Commission notes the Company's response and will receive an update from CUC regarding its bill format on or before July 1, 2020.

84. The Commission finds and directs CUC to provide an update and information its bill format on or before July 1, 2020.

85. Mr. Parkinson and several customers compared the Company's rates unfavorably to other utilities. R. p. 200.8; Exhibit 14 (Parkinson Direct, p 8, ll. 8-16; Exhibit 1). CUC responds that the comparisons are not useful for ratemaking purposes, especially because the entities cited by Mr. Parkinson are unregulated governmental or non-profit entities. R. pp. 122.9-122.10 (Mikell Rebuttal, pp. 9, l. 6 – 10, l. 17).

86. CUC and Mr. Parkinson also disagreed on the average usage and bills of CUC's customers. *Id.* At the hearing, Mr. Parkinson explained he computed monthly bills for water and sewer customers who also have an irrigation meter and used 10,000 gallons of water per month. to make his comparison. There is no indication he also

included irrigation meter charges in his calculations of the average bills of utilities he deemed comparable.

87. The Commission finds the POAs' rate comparison does not account for the different sizes, cost structures, and ownership of the utilities. The Supreme Court has held "it is improper for the PSC to draw comparisons with other entities without stating its basis for finding the entities sufficiently similar for comparison purposes." *Utils. Servs. of S.C. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 114, 708 S.E.2d 755, 765 (2011) citing *Heater of Seabrook v. PSC*, 332 S.C. 20, 26; 503 S.E.2d 739, 742 (1998). The Commission finds that the record does not provide a basis for a permissible comparison.

88. Evidence in the record exists for the Commission to conclude there is inequity in the existing rate design among CUC's customers. However, in order for the Commission to set rates that fairly distribute the revenue requirement of the utility equitably between its customers, the Commission finds and directs that CUC conduct a cost of service study prior to filing its next rate case.

Other Adjustments

89. Mr. Parkinson, and three customers at the night hearing, testified they would like the option to pay their bills online. R. pp. 200.8 (Parkinson Direct, p. 8, ll. 3-7); 19, l. 4 – 21, l. 25; 47, l. 5 – 48, l. 15; 73, l. 1 – 74, l. 17. CUC's practice has been to send mail bills at the beginning of the month and indicated that they are due by the 15th day of the month. Customers said this deadline was too short, especially if there were delayed in receiving the bill due to travel or mail forwarding. Many of CUC's customers

travel, or reside in Beaufort County on a seasonal basis, and desire the convenience of a remote payment option. *Id.*

90. In response to these requests, CUC's President, Susan Mikell, testified that the Company shall create a website. R. p. 126.1 (Resp. Testimony of Susan B. Mikell, p. 1, l. 10-14.). She further testified about plans to offer an online payment option by December 31, 2020, and will report to the Commission on its implementation plan by July 1, 2020. *Id.*

91. The Commission finds that CUC has agreed to the POAs request to create a website and that the CUC shall create a company website. The Commission directs CUC to notify the Commission when its website is online and submit a report on its online billing and payment options no later than July 1, 2020.

92. The Commission heard from three customers who testified regarding their interactions with the Company. Two of the customers complained of high bills, and the other of past due notices. CUC provided detailed confidential responses with supporting documentation in answer to the concerns raised by these individuals. R. pp. 128-130 (Confidential Responsive Testimony of Susan B. Mikell).

IV. FINDINGS OF FACT

Based upon the Discussion, Findings of Fact as set forth herein, and the record of the instant proceeding, the Commission makes the following Findings of Fact:

1. CUC is a water and sewer utility providing water and sewer service in its assigned service area on Callawassie Island, Spring Island and Chechessee Bluff, Beaufort County, South Carolina. The Commission is vested with authority to regulate

rates of every public utility in this state and to ascertain and fix just and reasonable rates for service. S.C. Ann. §58-5-210, *et. seq.* CUC's operations in South Carolina are subject to the jurisdiction of the Commission.

2. The appropriate Test Year period for this proceeding, selected by the Company, is January 1, 2018 through December 31, 2018. CUC submitted evidence in this case with respect to its revenues and expenses using a Test Year consisting of the twelve (12) months ending December 31, 2018.

3. CUC requested to increase revenues for combined operations by \$238,004 consisting of a water revenue increase of \$161,163 and a sewer revenue increase of \$76,841 to produce net operating income of \$177,781 after the proposed increase.

4. CUC requested rates set on an OM basis. While there is no requirement that OM methodology be used in determining a fair rate of return, CUC requested OM treatment in its Application. ORS performed its audit and recommendation based on an OM methodology. No party contested CUC's use of an OM methodology. The weight of the evidence, including witnesses' testimony, supports this methodology.

5. The OM methodology is appropriate for determining the lawfulness of the Company's rates and in fixing just and reasonable rates.

6. The requested revenue increase of CUC results in a potential OM of 15.18%.

7. CUC apportioned the requested revenue requirement equally to all base facility charges and consumption rates. The proposed increase to all customer classes is approximately 19.76%.

8. ORS recommended a potential OM 12.51%. We conclude that the weight of the evidence, including witnesses' testimony, supports an OM of 12.51%.

9. CUC incurred an additional \$26,256 in rate case expenses that were reviewed by ORS and submitted to the Commission after the completion of the merits hearing in this matter. ORS does not object to the recovery of these expenses over a 3-year amortization period. The Commission finds the Company's rate case expenses were reasonably and prudently incurred and should be recovered over a 3-year period.

10. Supported by the evidence, we conclude that the proposed OM of 12.51% made by ORS is just and reasonable while allowing the Company to continue to provide its customers with quality water and sewer service.

11. ORS and CUC agreed on the adjustments recommended by ORS except for the Adjustment 17 concerning TCJA and a proper operating margin.

12. The Commission adopts those adjustments with which no party disagreed as they are just and reasonable.

The following Table indicates the Company's gross revenues for the test year, after accounting and pro forma adjustments under the presently approved schedules; the Company's operating expenses for the test year after accounting and pro forma adjustments; and the operating margin under the presently approved schedules for the test year.

TABLE A

Operating Revenues	\$1,284,946
Operating Expenses	<u>1,212,915</u>
Net Operating Income (Loss)	72,031
Less: Interest Expense	<u>2,187</u>
Total Income for Margin	<u>69,844</u>
Operating Margin (After Interest)	<u>5.44%</u>

13. The Commission finds that the Company's refund calculation and its proposal to refund the \$33,508 to its customers in either a one-time bill credit, or in two yearly installments of \$16,754, is appropriate. Therefore, Commission further finds that the CUC shall refund the \$33,508 to customers who were a customer during the time CUC collected the excess revenue. The refund shall be made by (a) refund check, or (b) in a one-time bill credit, or in two yearly installments of \$16,754; however, the Company must notify the Commission which option CUC chooses. To the extent that a customer entitled to a refund is no longer on the system and cannot be located, refunds must be handled pursuant to the South Carolina Uniform Unclaimed Property Act. S.C. Code Ann. §§27-18-10 *et. seq.*

14. A changing of the tax structure results in a changing of rates to a utility's customers and should likewise result in a refund or debit according to the change in tax rate. In this case, because the tax rate decreased, it is just and reasonable that CUC return to its customers the difference between the tax liability collected under the old tax rate and the new tax rate be returned to CUC's customers.

15. The Commission adopts the position of CUC "to eliminate" the Availability Fees.

16. The Commission finds the high delinquency rate, low actual collection rate, and the difficulty of pursuing the collection of Availability Fee by CUC justifies CUC's request to eliminate the Availability Fees.

17. This Commission has not concluded that CUC's operating expenses are excessive, but does require CUC to conduct a cost of service study prior to the filing of its next rate case to help ensure its cost allocation and rate design are more equitable.

18. CUC shall implement a website that enables its customers to pay their bills online. The Company shall notify customers of the web address and give instructions on how to pay once it is in operation.

V. CONCLUSIONS OF LAW

Based upon the Discussion, Findings of Fact as set forth herein, and the record of the instant proceeding, the Commission makes the following Conclusions of Law:

1. CUC is a public utility as defined in S.C. Code Ann. § 58-5-10(3) and as such is subject to the jurisdiction of this Commission pursuant to S.C. Code Ann. §§ 58-3-140(A) (Supp.2019) and 58-5-210 (2015).

2. The Commission is vested with authority to regulate rates of every public utility in this state and to ascertain and fix such just and reasonable rates for service. S.C. Code Ann. § 58-5-210 (2015).

3. The Commission requires the use of an historic twelve-month test period pursuant to 10 S.C. Code Ann. Regs. 103-823(A)(3) (2013).

4. The appropriate Test Year on which to set rates for CUC is the twelve-month period ending December 31, 2018.

5. Based on the information provided by the parties, the Commission concludes the appropriate rate setting methodology to use as a guide in determining the lawfulness of CUC's proposed rates and for the fixing of just and reasonable rates is OM.

6. A regulated utility is entitled to "an opportunity to earn a fair and reasonable return." *Southern Bell Telephone & Telegraph Co. v Public Service Comm. Of S.C.*, 270 S.C. 590, 600, 244 S.E.2d 278, 283 (1978).

7. The Commission determines that the ORS analysis, which resulted in an award of 12.51% OM to CUC incorporates all relevant facts and is just and reasonable.

8. We must consider all relevant facts when determining just rates.

9. The Company provided no plans, estimates, capital expenditures, or known and measurable changes on which this Commission could justify increasing CUC's current OM.

10. The Commission finds that in order to implement just and reasonable rates, \$33,508 must be refunded to its customers in either a one-time bill credit, or in two yearly installments of \$16,754, is appropriate. Therefore, Commission further finds that the CUC shall refund the \$33,508 to customers who were a customer during the time CUC collected the excess revenue. The refund shall be made by (a) refund check, or (b) in a one-time bill credit, or in two yearly installments of \$16,754; however, the Company must notify the Commission which option CUC chooses. To the extent that a customer entitled to a refund is no longer on the system and cannot be located, refunds must be handled pursuant to the South Carolina Uniform Unclaimed Property Act. S.C. Code Ann. §§27-18-10 *et. seq.*

11. The record does not provide a basis for a permissible comparison sufficiently similar for comparison purposes as required by state law.

12. Evidence does exist in the record to conclude there is inequity in the existing rate design among CUC's customers. However, in order for the Commission to set rates that fairly distribute the revenue requirement of the utility equitably between its customers, the Commission finds and directs that CUC conduct a cost of service study prior to filing its next rate case.

13. We find that CUC has agreed to the POAs request to create a website and that the CUC shall create a company website. The Commission directs CUC to notify the Commission when its website is online and submit a status report on its online billing and payment options no later than July 1, 2020.

IT IS THEREFORE ORDERED THAT:

1. The accounting adjustments reflected in Order Attachment 1, which was agreed upon by CUC and ORS, are approved, adopted and accepted into the record and are incorporated and made part of this Order by reference.

2. The Company is to provide thirty (30) days' advance notice of the increase to customers of its water and wastewater services prior to the rates and schedules being put into effect for service rendered. The schedules shall be deemed to be filed with the Commission pursuant to S.C. Code Ann. § 58-5-240.

3. Based upon the rates, charges and accounting adjustments approved herein, there are additional revenues in the amount of \$146,900 and resulting Operating Margin of 12.51% are approved for CUC.

The following Table reflects an operating margin of 12.51%:

<u>TABLE B</u>	
Operating Revenues	\$1,431,846
Operating Expenses	<u>1,250,479</u>
Net Operating Income (Loss)	181,367
Less: Interest Expense	<u>2,187</u>
Total Income for Margin	<u>179,180</u>
Operating Margin (After Interest)	<u>12.51%</u>

4. CUC is authorized to collect a water tap fee of \$699.51 and a sewer tap fee of \$832.75 and CUC shall file a tariff reflecting the new tax liability for Contributions in Aid to Construction within thirty (30) days of the entry of this Order.

5. CUC shall refund \$33,508 to its customers in either a one-time bill credit, or in two yearly installments of \$16,754, is appropriate. Therefore, Commission directs that the CUC shall refund the \$33,508 to customers who were a customer during the time CUC collected the excess revenue and that the refund shall be made by (a) refund check, or (b) in a one-time bill credit, or in two yearly installments of \$16,754; however, the Company must notify the Commission which option CUC chooses. To the extent that a customer entitled to a refund is no longer on the system and cannot be located, refunds must be handled pursuant to the South Carolina Uniform Unclaimed Property Act. S.C. Code Ann. §§27-18-10 *et. seq*

6. The Commission finds CUC's updated rate case expenses submitted at the conclusion of the hearing following review by the ORS, to be reasonable and that CUC's rate case expenses shall be amortized over a three-year period, in the amount of \$12,766, as the Company and ORS agreed.

7. CUC shall eliminate Availability Fees as soon as practicable.

8. The Company shall continue to maintain current performance bonds in the amounts of \$350,000 for water operations and \$350,000 for wastewater operations pursuant to S.C. Code Ann. § 58-5-720.

9. The Company shall conduct a cost of service study prior to filing its next adjustment to rates case in order to ensure that cost allocation is appropriate and to propose a rate design methodology that eliminates subsidization.

10. The Company's books and records shall be maintained according to NARUC Uniform System of Accounts. The Company is directed to make any necessary adjustments to its accounting system to conform to the NARUC Uniform System of Accounts.

11. The Company shall file the rate schedule/tariff incorporating the changes approved herein reflecting an Operating Margin of 12.51% within ten (10) days from the date of this Order.

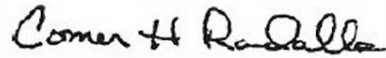
12. The Company will report to the Commission on its implementation plan for an online billing option by July 1, 2020.

13. The Commission directs CUC to notify the Commission when its website is online and submit a report for an online billing and payment options no later than July 1, 2020.

14. The Company will provide the Commission an update on information provided in its bill format on or before July 1, 2020.

15. This Order will remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



Comer H. "Randy" Randall, Chairman

ATTEST:



Jocelyn Boyd, Chief Clerk/Executive Director

ORDER 2020-__-WS

CUC, Inc.
Docket No. 2019-64-WS
Operating Experience, Operating Margin, & Rate Base Reflecting ORS's Proposed Increase
For the Test Year Ended December 31, 2018
Combined Operations

Description	(1) Application Per Books \$	(2) Accounting & Pro Forma Adjustments \$	(3) After Accounting & Pro Forma Adjustments \$	(4) Increase \$	(5) After Proposed Increase \$
Operating Revenues:					
Metered Revenue	1,213,936	(12,824) (1)	1,201,112	146,900 (14)	1,348,012
Other Revenue	63,131	20,703 (2)	83,834	0	83,834
Total Operating Revenues	1,277,067	7,879	1,284,946	146,900	1,431,846
Operating Expenses:					
Operating Expenses	1,130,764	(19,555) (3)	1,111,209	0	1,111,209
Depreciation & Amortization	24,946	(9,152) (4)	15,794	0	15,794
Rate Case Expenses	0	12,766 (5)	12,766	0	12,766
Taxes Other Than Income	49,466	461 (6)	49,927	1,216 (15)	51,143
Income Taxes	17,596	5,623 (7)	23,219	36,348 (16)	59,567
Total Operating Expenses	1,222,772	(9,857)	1,212,915	37,564	1,250,479
Total Operating Income	54,295	17,736	72,031	109,336	181,367
Other Operating Income					
Add: Amortization of Excess Revenues	0	0	0	0	0
Net Operating Income	54,295	17,736	72,031	109,336	181,367
Less: Interest Expense	1,365	822 (8)	2,187	0	2,187
Net Income for Margin	52,930	16,914	69,844	109,336	179,180
Operating Margin	4.14%		5.44%		12.51%
Original Cost Rate Base:					
Gross Plant in Service	603,995	191,802 (9)	795,797	0	795,797
Accumulated Depreciation	(508,622)	(59,210) (10)	(567,832)	0	(567,832)
Net Plant in Service	95,373	132,592	227,965	0	227,965
Contributions in Aid of Construction (CIAC)	(831,775)	(402,127) (11)	(1,233,902)	0	(1,233,902)
Accumulated Amortization of CIAC	0	1,091,088 (12)	1,091,088	0	1,091,088
Materials and Supplies	6,227	0	6,227	0	6,227
Cash Working Capital	0	138,902 (13)	138,902	0	138,902
Accumulated Deferred Income Taxes	0	0	0	0	0
Total Rate Base	(730,175)	960,455	230,280	0	230,280